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September 2, 2003

John Peter Suarez  
Assistant Administrator  
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1200 Pennsylvania Ave., N.W.  
Mail Code 2201A  
Washington, D.C. 20460

**RE: Clean Air Act Investigations and Enforcement at  
Concentrated Animal Feeding Operations (CAFOs)**

Dear Mr. Suarez:

We are writing to request that the Environmental Protection Agency (EPA) immediately take steps to monitor and control air emissions from concentrated animal feeding operations (CAFOs). Air pollution from CAFOs continues to foul the air and threaten the health of citizens. CAFO emissions also make it impossible for some counties to comply with the National Ambient Air Quality Standards. Although the health and environmental consequences of agricultural air pollution have grown more serious as CAFO facilities continue to expand in size, EPA has not initiated CAFO Clean Air Act (CAA) investigations or enforcement for at least two years, effectively maintaining a moratorium on such activities.

We ask EPA to lift its moratorium and fulfill its mandate to protect human health by taking the following actions: (1) file complaints against Buckeye Egg Farms, L.P. and Seaboard Farms, Inc. for violating the Clean Air Act; and (2) investigate air emissions at other CAFOs that present the greatest risk to public health or the environment.

The previous Administration took important first steps to require CAFOs to comply with the CAA by investigating air emissions at a few large facilities. The current Administration however has failed to continue these efforts. For instance, under the Clinton Administration, EPA ordered Buckeye Egg Farm's layer operations in Ohio to test for particulate matter (PM) emissions at their confinement facilities. *See* EPA, *Notice*

*and Finding of Violation*, EPA-5-OH-09 (Jan. 2001); EPA, *Request to Provide Information Pursuant to the Clean Air Act* (Jan. 2001).

Buckeye Egg only partially complied with its first order by failing to test some of its buildings, forcing Region 5 to issue a second order eleven months later. However, based on testing that Buckeye conducted at a few of its confinement buildings, the company determined that the Marseilles facility has the potential to emit 325 tons of particulate matter (PM) per year. Using the same data, EPA found that Buckeye underestimated its emissions and that the Marseilles facility may actually emit more than 700 tons of particulate matter per year. *See Letter to Bill Glass from Kevin Vuilleumier Regarding June 4-8 Emission Testing* (December 11, 2001). In either case, Buckeye Egg violated the Clean Air Act. *See* Prevention of Significant Deterioration requirements at Subchapter I, Part C of the CAA, 42 U.S.C. §§ 7470-7470 and the permitting requirements of Subchapter V of the CAA, 42 U.S.C. §§ 7661-7661(f). The current Administration has never filed an enforcement action against Buckeye Egg, although it has known about Buckeye's violations for years.

Recently, the Ohio Department of Agriculture took the extraordinary step of ordering Buckeye Egg Farms to close its barns. *See* Ohio Department of Agriculture Livestock and Environmental Permitting Program News Release, *Ohio Agriculture Director Fred L. Dailey Orders Buckeye Egg Farm to Close Barns* (July 8, 2003). This action was a welcome but overdue response to more than a decade of pollution and nuisance problems caused by Buckeye, including violations of the Clean Air Act that EPA has never addressed. Buckeye Egg appealed the Department of Agriculture's order, and Japan-based Ise Farms and Ohio Fresh Eggs may buy the facilities. *See* Animal Welfare Institute Summer Quarterly (2003) at <http://www.awionline.org/pubs/Quarterly/03-52-2/523p7b.htm>. Ohio's order to close Buckeye will be meaningless if the air pollution continues under another name.

Based on the results of a second CAFO investigation that occurred under the previous Administration, EPA ordered Seaboard Farms' swine facilities in Oklahoma, Texas, Kansas and Colorado to test for emissions of particulate matter, hydrogen sulfide and volatile organic compounds from its confinement buildings and lagoons. *See Letter from David Nielson to Rick Hoffman and Jean Tomaselli* (April 2, 2002). Like Buckeye, Seaboard has never complied with its test order. EPA has not addressed Seaboard's violations of its order and its other likely violations of the Clean Air Act. Moreover, the current Administration has not required any other CAFO to test its air emissions.

### ***File Complaints Against Buckeye Egg and Seaboard Farms for Violating the Clean Air Act***

EPA should immediately file a complaint against Buckeye Egg Farms for violating the Clean Air Act, particularly because it has known about Buckeye's violations for over two years. The Agency should ask the relevant court to order compliance and

assess penalties significant enough to deter Buckeye Egg and all CAFOs from ignoring federal law. EPA should follow Ohio's lead and seek an order to shut the company down if it refuses to come into compliance after an enforcement action has been taken.

EPA should also file a complaint to enforce the test order it issued to Seaboard Farms. Source data from companies with potentially high air emissions are necessary to evaluate public health and environmental risks related to exposure. Moreover, these data will help determine whether large CAFOs are able to control their air pollution.

### ***Investigate Air Emissions at Large CAFOs***

Acting only on Buckeye's and Seaboard's violations of the Clean Air Act is insufficient to demonstrate that EPA is willing to exercise its authority under the law to protect human health and the environment from CAFO air emissions. The preliminary data from Buckeye Egg suggests that *all* large layer operations are likely major sources of particulate matter and should be required to apply for Clean Air Act permits and install pollution controls. In the face of this data, EPA should not retreat from its Clean Air Act investigations of CAFOs. Rather, EPA should use existing statutory authority to demand emissions monitoring data from operations that present the greatest risk. *See* 42 U.S.C. § 7414 (a). Based on air emissions data collected from Buckeye, EPA should immediately require monitoring of annual emissions rates of particulate matter at layer facilities that house 1.5 million layers or more. EPA should start with the layer facilities identified in Appendix A, because they are some of the largest layer operations in the country and they are the subject of citizen complaint.

EPA should not wait for an elaborate new set of emissions factors before beginning to measure particulate matter from confinement buildings and other structures. EPA can measure emissions from CAFO structures in the same way it measures particulate matter emissions from other industries that vent their emissions from buildings.

In addition to layer operations, we ask that EPA investigate air emissions from CAFOs in other sectors, starting with the facilities listed in Appendix A. While this letter focuses on CAFO air emissions, many of the listed facilities also have a history of chronic Clean Water Act and other compliance problems. *See* Sierra Club's Rapsheet on Animal Factories located at [www.sierraclub.org/factoryfarms/rapsheets/operators.asp](http://www.sierraclub.org/factoryfarms/rapsheets/operators.asp).

Appendix B provides a detailed explanation of how we identified these facilities. Generally, the facilities meet a certain size threshold and are the subject of citizen complaint. The list in Appendix B is not exhaustive, because it is nearly impossible for citizens to obtain information about specific CAFO facilities as many states do not issue permits to CAFOs nor do they document citizen odor complaints. Moreover, only a few states collect ambient or source measurements from livestock operations.

In order to provide communities located near CAFOs the same access to information that is afforded to people who live near other industries, EPA should require CAFOs to measure emission rates of ammonia, particulate matter, volatile organic compounds and hydrogen sulfide from their confinement buildings and lagoons. *See* National Research Council, *Air Emissions from Animal Feeding Operations: Current Needs, Future Operations* (February 2003); *see also* Letter from David Nielson to Rick Hoffman and Jean Tomaselli (April 2, 2002).

We are aware that EPA has been negotiating a voluntary agreement with industry in lieu of using its statutory authority to obtain emissions testing for some of these pollutants. These discussions have been moving at a glacial pace, however, and have yet to result in a single source test. We do not support the agreement proposed by industry for the reasons set forth in previous correspondence to you. *See* Letter from Brent Newell, Center on Race, Poverty & the Environment, et. al to Administrator Whitman (May 5, 2003).

We hope that you give CAFO air emissions the serious attention they deserve. We urge you to lift the moratorium on CAFO air investigations and enforcement, take swift action against CAFO operations that violate the Clean Air Act, and impose controls to reduce their pollution. By taking vigorous action, you will demonstrate to communities who suffer the direct effects of CAFO air emissions that they are not forgotten, and that the Clean Air Act applies to CAFOs in the same way that it does to every other industry.

Sincerely yours,

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John Peter Suarez  
September 2, 2003  
Page 6

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